Supreme Court, U.S.
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No. 99-718

In The

Supreme Court of the United States

JOSE CARRILLO,

Petitioner,

vs.

ACF INDUSTRIES, INC.,

Respondent.

On Petition For A Writ of Certiorari To The Supreme Court Of The State Of California

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Did the California Supreme Court follow settled federal law in holding that the Safety Appliance Acts and their regulations preempt state law product liability claims arising from a manufacturer's failure to install a safety appliance not required or authorized in the federal regulations?

2. May plaintiffs bring product liability actions against railcar manufacturers for failing to equip cars with safety appliances not required or authorized by the federal regulations when to allow such actions would mean that each railcar would have to comply with differing common law equipment requirements in each of the fifty states, thereby undermining the federal uniformity that is essential to the safe and efficient operation of the national railroad system and interstate commerce?

STATEMENT UNDER RULE 29.6

ACF Industries, Incorporated is owned by ACF Industries Holding Corp. and has no subsidiaries.

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STATUTORY PROVISIONS INVOLVED

This case involves the Supremacy Clause of the United States Constitution, article VI, clause 2; the Safety Appliance Acts, 49 U.S.C. §§ 20301-20306; and the regulations issued pursuant to the Safety Appliance Acts, 49 C.F.R. part 231. Excerpts from these provisions are set forth in petitioner's appendix, hereinafter cited as "App." (*See* App. at 55-58, 60-101.)

This case also implicates the Commerce Clause of the United States Constitution, article I, section 8, clause 3, which provides that Congress shall have the power "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

In its briefs filed in the California Supreme Court, ACF argued that Carrillo's claims were also preempted by another federal statute, the Federal Railroad Safety Act of 1970, 49 U.S.C. §§ 20101 et seq. (*See* App. at 59.) However, the California Supreme Court expressly stated it was not reaching this issue. (*See* App. at 16 n.3.) Carrillo's suggestion that the court's decision addresses the act (*see* App. at 27-30) is erroneous.

STATEMENT OF THE CASE

I. INTRODUCTION

The Safety Appliance Acts (SAA), enacted between 1893 and 1910, were among this country's first railroad

safety statutes.[1] The SAA and its regulations set forth uniform national standards for "safety appliances" on railroad cars, i.e., appliances such as running boards, handholds, grab irons, ladders, and railings, all of which are designed to protect workers while working on and around railcars. As early as 1915, this Court held that the SAA and its regulations preempted the *entire field* of safety appliances and prohibited the states from requiring "*greater* or *less* or *different* equipment." *Southern Ry. Co. v. Railroad Comm'n*, 236 U.S. 439, 446 (1915) (emphasis added). This Court has repeatedly reaffirmed this holding.

The California Supreme Court applied this settled federal law in holding that the SAA and its regulations preempt common law tort claims based on a railcar manufacturer's failure to equip its car with an *additional* safety appliance neither required nor authorized by the regulations. The decision correctly observes that allowing the fifty states to impose their own, potentially-conflicting, common law requirements would generate " 'inconsistencies in railroad safety standards that Congressional action was intended to avoid' " (App. at 7) and "create an unconstitutional burden on interstate commerce" (App. at 16).

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[1] Act of March 2, 1893, ch. 196, 27 Stat. 531, formerly codified at 45 U.S.C. §§ 1-7; Act of March 2, 1903, ch. 976, 32 Stat. 943, formerly codified at 45 U.S.C. §§ 8-10; Act of April 14, 1910, ch. 160, 36 Stat. 298, formerly codified at 45 U.S.C. §§ 11-16. The current version of the SAA appears at 49 U.S.C. §§ 20301-20306. For convenience, we refer to the "SAA" in the singular.

In his petition, Carrillo contends that the court's decision conflicts with recent decisions of this Court and that, as a result, courts all over the United States are in "a state of confusion" regarding the scope of the SAA. (Petition [hereinafter Pet.] at 17.) That is simply not the case. The California Supreme Court's decision follows a long line of federal decisions from the early 1900s to the present – decisions that make clear that the SAA preempts the entire field of safety appliances and does not allow states to impose their own requirements in this area. In contrast, many of the decisions on which Carrillo relies do not even *address* the issue of federal preemption. Other decisions, such as the recent decisions of this Court, do address preemption but in the context of entirely different federal statutes or subject matters. The conflict to which Carrillo alludes is simply not there.

Carrillo also implies that the California Supreme Court's decision somehow *threatens* the safety of railroad workers. Quite the contrary. Federal uniformity with respect to the safety appliances on the various types of railcars in service throughout the United States *enhances* worker safety because it allows workers all over the country to become familiar with the appliances they will encounter on each type of car, regardless of the car's state of origin. Allowing states to impose their own requirements for safety appliances would disrupt this uniformity and thereby impair worker safety.

In short, the California Supreme Court's decision is a straightforward and unremarkable application of federal law that will preserve the federal uniformity that has

allowed the national railroad system to operate successfully for over a century. There is no issue warranting review.

II. PERTINENT FACTS AND PROCEDURAL HISTORY

ACF adopts and hereby incorporates by reference the statement of facts and procedural history set forth in the California Supreme Court's opinion. (*See* App. at 2-3.) ACF makes the following corrections and/or clarifications to the factual statements set forth in Carrillo's petition:

1. In describing the SAA, Carrillo states that the statute applies only to the "narrow list" of equipment set forth in the statute and in the regulations. (Pet. at 7.) This statement erroneously implies that if a particular appliance is not specifically mentioned in the statute itself or its regulations, then the states are free to impose their own requirements for that appliance. However, as explained below, courts have repeatedly held that the SAA and its regulations occupy the entire field of safety appliances. Thus, the regulations necessarily have both a prescriptive and limiting effect on what safety appliances are or are not permitted on the various types of railcars.

2. Carrillo contends it is "undisputed" that there are no regulations concerning protection from falls off the top of hopper cars. (Pet. at 25.) He is mistaken. The regulations include requirements for non-skid running boards, which are specifically designed to reduce the risk that a worker will fall off the top of the car. The regulations also include requirements for handholds and other

appliances designed to protect against falls and other hazards a worker might confront. *See* 49 C.F.R. § 231.28 (referencing §§ 231.1 and 231.27).[2]

3. Carrillo implies that he asserted a separate failure to warn claim based on the absence of "warning and instructions directing workers that they should not be working on the top of the hopper car without fall protection equipment." (Pet. at 5.) However, he asserted the need for such warnings and instructions only in connection with one of his design defect theories, i.e., his theory that the hopper car should have been equipped with a low railing to which a harness and lanyard could be attached. (*See* Reporter's Transcript [hereinafter RT] at 598-601.) At trial, Carrillo's own expert testified that he would not recommend warnings in the absence of a design change. (*See* RT at 634.)

REASONS WHY THE PETITION SHOULD BE DENIED

I. THE CALIFORNIA SUPREME COURT'S DECISION UPHOLDING THE PREEMPTIVE EFFECT OF THE SAA FOLLOWS A LONG LINE OF FEDERAL AUTHORITY FROM 1915 TO THE PRESENT.

This Court has long held that the SAA and its regulations preempt the entire "field" of safety appliances on railcars. In *Southern Railway Co. v. Railroad Commission*, 236 U.S. at 446, the first case to address the issue, the

[2] The centerflow covered hopper car at issue in this case is classified under the regulations as a "house car[ ] with roof hatches." 49 C.F.R. § 231.28. The regulations have been reproduced in petitioner's appendix. (*See* App. at 60-101.)

Court expressly stated that the preemptive effect of the SAA "did not relate merely to the details of the statute and the penalties it imposed, but extended to *the whole subject of equipping cars with appliances intended for the protection of employees.*" (Emphasis added.) The Court explained that, as a result of the SAA, "[t]he states . . . could not legislate so as to require *greater* or *less* or *different* equipment." *Id.* at 446 (emphasis added). The Court further emphasized that Congress's occupation of the "field of legislation relating to the equipment of freight cars with safety appliances . . . [was] *too well established to require argument.*" *Id.* at 447 (emphasis added).[3]

Since *Southern*, this Court has consistently held that the SAA and its regulations preempt the *entire field* of safety appliances. *See Gilvary v. Cuyahoga Valley Ry. Co.*, 292 U.S. 57, 60-61 (1934) ("So far as the safety equipment of such vehicles is concerned, these Acts operate to

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[3] In an effort to make it appear as if there is some uncertainty in the law, Carrillo erroneously characterizes *Southern*'s holding as "dicta." Carrillo misuses the term. A "dictum is a statement in a judicial opinion that could have been deleted without seriously impairing the analytical foundations of the holding." *Sarnoff v. American Home Prods. Corp.*, 798 F.2d 1075, 1084 (7th Cir. 1986). The statements at issue in *Southern* clearly could not have been deleted because they expressly set forth the Court's holding with respect to the issue before it – the preemptive scope of the SAA. "[A] plain statement of a statute's meaning, adopted by the Supreme Court as the basis of its decision is much more than 'dictum' however apparent it may seem to analysts that the court could have gone on a narrower ground, had it chosen to do so." *United States v. Tieger*, 234 F.2d 589, 592 (3d Cir. 1956), *cert. denied*, 352 U.S. 941 (1956).

exclude state regulation *whether consistent, complementary, additional or otherwise*" (emphasis added)); *Pennsylvania R.R. Co. v. Public Service Comm'n*, 250 U.S. 566, 569 (1919) ("when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the States no more can supplement its requirements than they can annul them"); *Texas & Pac. Ry. Co. v. Rigsby*, 241 U.S. 33, 41 (1916) ("Congress having entered this field of regulation, it follows from the paramount character of its authority that state regulation of the subject-matter is excluded"); *see also California v. Zook*, 336 U.S. 725, 735 (1949) (characterizing the subject matter of *Southern* as a statute manifesting a "congressional purpose to displace local laws and establish a uniform rule beyond which states may not go").

Although Carrillo implies that these decisions are old and outdated, this Court has never overruled its prior holdings, nor is there any hint that it has ever considered doing so. Indeed, more recent decisions of this Court continue to cite the analysis in *Southern* as a straightforward example of field preemption. *See Maryland v. Louisiana*, 451 U.S. 725, 746 (1981); *Ray v. Atlantic Richfield Co.*, 435 U.S. 151, 157-58 (1978).[4]

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[4] Even more recently, in *Ouellette v. Union Tank Car Co.*, 902 F. Supp. 5 (D. Mass. 1995), a federal district court discussed the preemptive effect of the SAA in connection with the Federal Railroad Safety Act of 1970. *See id.* at 11. Although the court's analysis focused on the more recent statute, the court's conclusion was consistent with the earlier decisions of this Court. The court held that plaintiffs could not bring common law claims based on a railroad manufacturer's failure to equip its car with a particular safety appliance. The court explained

A line of federal court decisions discussing a related railroad safety statute, the Boiler Inspection Act (BIA), reinforces the conclusion that the SAA continues to have a broad preemptive effect. Congress enacted the BIA in 1911, a few years after it enacted the SAA.[5] Both acts fall within the jurisdiction of the Secretary of Transportation, which, through the Federal Railroad Administration, promulgates and enforces railroad safety regulations. The primary difference between the SAA and the BIA is that they address two different, albeit conceptually overlapping, categories of train equipment. Whereas the SAA concerns safety appliances intended for the protection of railroad workers working on and around railcars, the BIA was generally intended to protect workers from injuries caused by defective locomotive equipment.

In *Marshall v. Burlington Northern, Inc.*, 720 F.2d 1149 (9th Cir. 1983), a decision authored by Justice Kennedy when he was sitting on the Ninth Circuit, the court held that the BIA preempts the field of locomotive equipment and that the states cannot "impose liability for failure to install a part or attachment of a locomotive if it is 'within the scope of the authority delegated to the [Secretary].' "

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that if "state common law tort claims were permitted to proceed . . . then manufacturers would inevitably be subjected to varying interpretations of the federal regulations in the different states. [Citation.] *Inevitably, these tort actions would generate precisely those inconsistencies in railroad safety standards that Congressional action was intended to avoid." Id.* at 10 (emphasis added).

[5] The BIA was formerly codified at 45 U.S.C. §§ 22-34. The current version of the statute appears at 49 U.S.C. §§ 20701-20903.

Id. at 1152. Other courts have reached the same conclusion. *See, e.g., Springston v. Consolidated Rail Corp.*, 130 F.3d 241, 245 (6th Cir. 1997), *cert. denied*, 523 U.S. 1094 (1998) (BIA preempts negligence claims based on failure to install additional warning devices not required by statute); *King v. Southern Pac. Transp. Co.*, 855 F.2d 1485, 1489 (10th Cir. 1988) (BIA preempts claims based on a failure to "install additional safety devices which the Secretary of Transportation has not seen fit to require" (emphasis omitted)); *Missouri Pac. R.R. v. Railroad Comm'n of Texas*, 850 F.2d 264, 268 (5th Cir. 1988), *cert. denied*, 488 U.S. 1009 (BIA completely preempts field of locomotive equipment); *Eldridge v. Missouri Pac. R.R.*, 832 F. Supp. 328, 330 (E.D. Okla. 1993) (BIA preempted claim that locomotive was equipped with inadequate warnings).

An even more recent Ninth Circuit decision authored by Judge Kozinski and cited in the California Supreme Court's opinion explains why a broad preemptive effect is necessary with respect to statutes like the BIA, which govern the equipment of railroad cars traveling in interstate commerce:

> This broad preemptive sweep is necessary to maintain uniformity of railroad operating standards across state lines. Locomotives are designed to travel long distances, with most railroad routes wending through interstate commerce. The virtue of uniform national regulation 'is self-evident: locomotive companies need only concern themselves with one set of equipment regulations and need not be prepared to remove or add equipment as they travel from state to state.' . . . *If each state were to adopt different liability-triggering standards, manufacturers would*

> *have to sell locomotives and cars whose equipment could be changed as they crossed state lines, or adhere to the standard set by the most stringent state. Either way, Congress's goal of uniform, federal regulation would be undermined.*

Law v. General Motors Corp., 114 F.3d 908, 910-11 (9th Cir. 1997) (emphasis added). As the California Supreme Court recognized, the Ninth Circuit's observations apply with equal force to the SAA.

Congress itself has recognized that railroad statutes such as the BIA and SAA enacted at the turn of the century continue to have broad preemptive effect. A House Report on the more recently enacted Federal Railroad Safety Act of 1970 (FRSA), specifically noted that these earlier laws "ha[d] served well" and that "the committee chose to continue them without change." H.R. Rep. No. 91-1194 (1970), *reprinted in* 1970 U.S.C.C.A.N. 4104, 4105. The House Report also acknowledged that in those areas where the federal government had already exercised its authority "with respect to rail safety, *it preempt[ed] the field.*" *Id.* at 4108 (emphasis added); *see also id.* at 4109 (while the new statute allows the states some role in railroad safety, "enforcement of regulations over rolling stock . . . remains exclusively Federal"); *id.* at 4110-11 (noting that, in certain "obvious areas" such as "rolling stock" which cross state lines, subjecting "a carrier to enforcement before a number of different State administrative and judicial systems in several areas of operation could well result in an undue burden on interstate commerce"); *id.* at 4117 ("[v]iolations involving rolling stock . . . were reserved to the Secretary for enforcement at the Federal level").

These authorities establish beyond question that the California Supreme Court's decision follows settled federal law. In contrast, most of the authorities on which Carrillo relies do not even address federal preemption. Many simply address whether a particular device is classified as a "safety appliance" for the purpose of determining whether a violation of the SAA has occurred.[6] Those few cases that do address preemption are either distinguishable or poorly reasoned and were easily disposed of by the California Supreme Court in its opinion. (*See* App. at 9-16.)

Finally, contrary to Carrillo's suggestion, the opinion in no way "conflicts" with recent preemption decisions of this Court. In upholding the preemptive effect of the SAA, the California Supreme Court clearly followed the guidelines set forth in this Court's recent preemption decisions. (App. at 3-4.) Those decisions on which Carrillo relies address entirely *different* federal statutes with *different* statutory language and legislative histories and therefore have no bearing on the result in this case.[7]

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[6] *See, e.g., Moses v. Union Pac. R.R.*, 64 F.3d 413 (8th Cir. 1995) ("pull plate" used for moving car with electric winch was not a safety appliance); *Jordan v. Southern Ry. Co.*, 970 F.2d 1350, 1354-55 (4th Cir. 1992) (ratchet mechanism used to open a door did not have safety as its primary function and was not classified as a safety appliance); *Hercules, Inc. v. Eilers*, 458 S.W.2d 221 (Tex. Civ. App. 1970), *cert. denied*, 403 U.S. 937 (1971) (dome lid on tank car was not a safety appliance). The California Supreme Court's decision effectively distinguishes these and other cases cited by Carrillo. (*See* App. at 9-14 & n.2; 17 n.4.)

[7] *See, e.g., Medtronic, Inc. v. Lohr*, 518 U.S. 470 (1996) (addressing Medical Device Amendments of 1976, 21 U.S.C. § 360c et seq.); *Freightliner Corp. v. Myrick*, 514 U.S. 280 (1995)

In short, Carrillo's suggestion that there is widespread confusion in the law and that the California Supreme Court has "turned back the clock" on preemption is nothing more than an attempt to contrive a United States Supreme Court issue where there is none. The petition should be denied.

II. ALLOWING THE STATES TO IMPOSE THEIR OWN REQUIREMENTS FOR SAFETY APPLIANCES WOULD IMPAIR WORKER SAFETY.

Referencing the FRSA, a statute not addressed in the California Supreme Court's decision,[8] Carrillo implies that the federal goal of national uniformity for safety appliances somehow conflicts with the federal goal of railroad safety. (*See* Pet. at 27-28.) In fact, the two goals go

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(addressing National Traffic and Motor Vehicle Safety Act, 15 U.S.C. § 1381 et seq.); *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504 (1992) (addressing Federal Cigarette Labeling and Advertising Act, 15 U.S.C. § 1331).

[8] Carrillo misleadingly states that the California Supreme Court concluded that the chief purpose of the FRSA was uniformity, not safety. (*See* Pet. at 27-28.) In fact, the court did not even *address* the purpose of the FRSA. The court simply and correctly observed that the FRSA did not narrow the preemptive scope of preexisting statutes such as the SAA, which were intended to preserve national uniformity. (*See* App. at 16 n.3.) Justice Kennedy, while sitting on the Ninth Circuit, made the very same observation with respect to the BIA. *See Marshall v. Burlington N. Inc.*, 720 F.2d 1149, 1152-53 (9th Cir. 1983); *accord Springston v. Consolidated Rail Corp.*, 130 F.3d 241, 245 (6th Cir. 1987); *Fort Worth & Denver Ry. Co. v. Lewis*, 693 F.2d 432, 433 n.1 (5th Cir. 1982); *Consolidated Rail Corp. v. Pennsylvania Pub. Util. Comm'n*, 536 F. Supp. 653, 656-57 (E.D. Pa. 1982).

hand in hand. As early as 1917, this Court recognized that uniformity in the field of safety appliances was necessary to ensure worker safety:

> [T]hey shall be standardized, shall be of uniform size and character, and so far as ladders and hand holds are concerned, shall be placed as nearly as possible at a corresponding place on every car so that employees who work always in haste, and often in darkness and storm, may not be betrayed to their injury or death, when they instinctively reach for the only protection which can avail them when confronted by such a crisis as often arises in their dangerous service. It is for such emergencies that these safety appliances are provided, – for service in those instant decisions upon which the safety of life or limb of a man so often depends in this perilous employment, – and *therefore this law requires that ultimately the location of these ladders and hand holds shall be absolutely fixed so that the employee will know certainly that night or day he will find them in like place and of like size and usefulness on all cars, from whatever line of railway or section of the country they may come.*

Illinois Cent. R.R. Co. v. Williams, 242 U.S. 462, 466-67 (1917) (emphasis added).

The need for national uniformity to ensure worker safety on railcars is as important today as it was eighty years ago. Uniformity with respect to each of the different types of railcars in service throughout the North American continent enhances safety by increasing worker familiarity and allowing facility owners to adapt their own loading procedures and safety equipment to the uniform cars. Permitting the states to impose additional

requirements for safety appliances through common law tort causes of action would destroy this uniformity and place workers all over the country at the mercy of potentially conflicting, after-the-fact, case-by-case assessments of railcar safety by lay juries.

CONCLUSION

For the reasons discussed above, the petition for a writ of certiorari should be denied.

Dated: November 24, 1999

Respectfully submitted,

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